

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSE J. JARAMILLO)	
)	
)	Case Number: 07 CV 07006
Plaintiff(s),)	
vs.)	Honorable Blanche M.
)	Manning
ESPERANZA FINANCIAL)	
SERVICES, et.al)	Magistrate Judge Susan E. Cox
)	
Defendant.)	

Jose Jaramillo's Reply to Response Filed by US Bank and WMC Mortgage Corporation to Motion for Default Judgment Against Esperanza Financial Services

Jose J. Jaramillo, Plaintiff, hereby replies to the response filed by U.S. Bank National Association, as Trustee for the Registered Holders of MASTR Asset Backed Securities Trust 2007-WMC1Mortgage Pass-Through Certificates Series 2007-WMC1("US Bank") and WMC Mortgage Corporation ("WMC") to his Motion for Default Judgment against Esperanza Financial Services ("Esperanza") and requests this Honorable Court enter judgment against Esperanza and in support, states as follows:

1. On December 13, 2007, Jose J. Jaramillo, plaintiff, filed his Complaint to Rescind Mortgage Pursuant to Federal Truth in Lending Act.
2. Summons was duly issued and, together with a copy of the complaint, was served upon Esperanza. The executed affidavit of service was filed on June 19, 2008. An answer was due on or before January 28, 2008

3. Esperanza had failed to file an answer on or before that date, nor had any responsive pleading been filed as of the date of this motion.

4. On April 28, 2008 Plaintiff filed its First Amended Complaint. A copy of this was served on Esperanza on May 6, 2008. An answer was due on or before May 27, 2008.

5. Esperanza failed to answer, move or otherwise plead to Plaintiff's complaint. Additionally, Esperanza did not appear at any status hearing.

6. Esperanza is in default for failure to answer, move or otherwise plead.

7. Accordingly, Plaintiff filed a Motion for Default Judgment against Esperanza seeking relief sought in the first amended complaint.

8. US Bank and WMC have filed a joint objection to Plaintiff's Motion for Default Judgment against Esperanza requesting that this Court deny Plaintiff's request for judgment stating that he has validly rescinded the transaction as it applies to Esperanza, that any mortgages or security interests be deemed void and unenforceable as it was procured by fraud.

9. Additionally, US Bank and WMC argue that any default judgment entered against Esperanza should not affect US Bank or the loans in any way.

10. Neither US Bank nor WMC have cited any legal authority in support of their standing to object to this Motion for Default Judgment against Esperanza. Neither of the Counsels for US Bank and WMC has filed an appearance or a responsive pleading on behalf of Esperanza. Esperanza has failed to take any responsive action in this action apart from sending Plaintiff's Counsel a letter at the

outset of the litigation indicating that they have fully complied with the Truth in Lending Act. A copy of this letter is attached hereto as **Exhibit A**.

11. Esperanza has not taken any substantive action in this litigation despite being properly served with the original complaint and the first amended complaint.

12. Plaintiff's first amended complaint includes Count I under the "Truth in Lending Act" for rescission and statutory damages against Esperanza, US Bank and WMC. The First Amended Complaint also includes a Count II for "Fraud in the Inducement" directed towards Esperanza.

13. In its Motion for Default Judgment, Plaintiff properly seeks the judgment it is entitled to under Count I and Count II as to Esperanza since Esperanza has not filed or otherwise plead in the action.

14. Plaintiff is entitled to rescission as to Esperanza since Esperanza has not put forth any evidence indicating that it provided two copies of the Notice of Right to Cancel to the Plaintiff. Plaintiff is also entitled to statutory damages for Esperanza's failure to rescind on a timely basis.

15. Similarly Esperanza has not raised any arguments to rebut Plaintiff's contention that there was a bait and switch at closing which resulted in the loan being procured by fraud.

16. US Bank and WMC have no standing to object to Plaintiff's motion for default judgment against Esperanza simply because they are not Esperanza. US Bank and WMC have not filed an answer or otherwise pled on behalf of Esperanza.

Therefore, they do not have the standing to assert any defenses or otherwise further the position of Esperanza.

17. Furthermore, the fraud in the inducement count is only directed as to Esperanza since WMC and US Bank were not involved with the loan transactions at the time of closing. US Bank and WMC have not cited any relevant authority allowing them to object to the entry of a judgment declaring the loans as null and void due to being procured by fraud.

18. Plaintiff's motion for default judgment is properly supported by an affidavit from the Plaintiff.

19. A copy of the proposed draft order is attached as **Exhibit B**.

20. A copy of Leibowitz Law Center's itemization for professional services rendered is attached hereto as **Exhibit C**.

Wherefore, Plaintiff respectfully requests that this Court enter an Order granting default judgment against Esperanza and for other relief that the Court deems just and equitable.

Respectfully Submitted By,
/s/ David P. Leibowitz
Attorney for Plaintiff

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